amendment filed February 21, 2007 amending all of the claims to an invention not originally presented is nonresponsive. (see MPEP 821.03)."

The action is in error and reconsideration and withdrawal is requested.

MPEP 821.03 is captioned "Claims for Different Invention Added After an Office Action". The amendment filed February 21, 2007 did not add any claims, nor broaden any claims, the claims instead narrowed by amendment. Neither form paragraph 8.04, which begins "Newly submitted claim [1] . . ." nor form paragraph 8.26, which begins "The amendment filed on [1] canceling all claims drawn to the elected invention. . ." are applicable because the amendment neither submitted any new claims nor canceled any old claims. The holding of nonresponsiveness is thus unsupported by MPEP 821.03.

Additionally, claim 16, which reads

16. (original) A non-invasive cancer screening method comprising
a) obtaining a saliva specimen from a patient,
b) forming a saliva sample from the saliva specimen,
c) bringing the saliva sample together with a reagent containing antibodies made against a plurality of proteonic cancer markers from different types of cancer cells to form an assay sample; and
d) determining whether an immunological reaction has occurred in the assay sample.

was not amended. The statement in the Office Action that "The amendment filed February 21, 2007 amending all of the claims to an invention not originally presented is nonresponsive . . ." (emphasis added) is not factually accurate. The stated justification is thus not supported by the facts.

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All amendments made to the independent claims in the February 21, 2007 Amendment were further limiting, as follows:

1. (currently amended) A process comprising
a) bringing together a reagent containing antibodies made against a mixture of proteonic cancer markers from different cell lines with a human saliva sample to form an assay sample, and
b) determining whether an immunological reaction has occurred in the assay sample.

Comment: "a mixture of proteonic cancer cell markers from different cell lines" is narrower in scope than " a mixture of proteonic cancer cell markers".

21. (currently amended) A cancer diagnostic method comprising
a) obtaining a saliva specimen from a patient,
b) forming a saliva sample from the saliva specimen,
c) separating the saliva sample into a plurality of portions,
d) bringing the portions of the saliva sample together with a plurality of reagents, a single reagent being brought together with each portion, each reagent containing a separate slate of antibodies made against proteonic cancer markers from different types of cancer cells, one type of cancer cells being used to form each slate of antibodies, to form a plurality of assay samples;
e) conducting a simple ELISA test on each of the plurality of assay samples to obtain an ELISA test result on each of the plurality of assay samples,
f) identifying a ~~most highly positive~~ test result above a predetermined value, and
g) associating the ~~most highly positive~~ identified test result with the type of cancer cells used to produce the antibodies yielding such results to provide the diagnosis,
wherein, in the simple ELISA test, each portion of the saliva sample is coated on a plate prior to being brought together with the reagent .

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Comment: "above a predetermined value" was recited in original claim 19. The limitation concerning the ELISA test is further limiting.

22. (currently amended) A method for monitoring effectiveness of cancer treatment, said method comprising

a) obtaining a first saliva specimen from a patient,

b) forming a first saliva sample from the first saliva specimen,

c) bringing the first saliva sample together with a reagent containing antibodies made against at least one proteonic cancer marker made from a single cancer cell line to form a first assay sample,

e) conducting a simple ELISA test on the first assay sample to obtain a first ELISA test result on the first assay sample,

f) treating the patient for a cancer represented by the cancer cell line used to make the proteonic cancer marker, and, after a period of time of at least one week,

g) obtaining a second saliva specimen from the patient,

h) forming a second saliva sample from the second saliva specimen,

i) bringing the second saliva sample together with the reagent to form a second assay sample,

j) conducting a simple ELISA test on the second assay sample to obtain a second ELISA test result on the second assay sample, and

k) comparing the second ELISA test result with the first ELISA test result to determine the effectiveness of the cancer treatment,

wherein, in the first and second simple ELISA tests, the saliva samples are coated on a plate prior to being brought together with the reagent. .

Comment: the added limitations concerning the ELISA tests are further limiting.

No basis has been set forth in the Office Action to support the contention that the claims have

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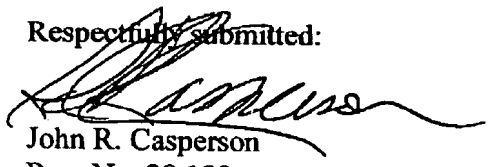
been amended to an invention that is independent or distinct from the claims originally presented. The analysis instead stops upon determining that the "invention" is different (i.e., is distinguishable) from that originally presented, and concludes that the "inventions" are distinct because they differ, and this is done without evaluating or even making reference to the claims. No attempt, for example, has been made to show that amended claim 1, which recites "mixture of proteonic cancer markers from different cell lines" is somehow independent or distinct from unamended claim 16, which recites "antibodies made against a plurality of proteonic cancer cell markers made from different types of cancer cells" or that adding the limitation "from different cell lines" to claim 1 results in a claimed invention which is independent or distinct from that described by claim 1 prior to the amendment.

The analysis that amending the claims to define a patentable invention where the claims previously did not do so constitutes presenting claims that are independent and distinct from those originally presented is faulty where the amendment is a narrowing one, as it could be used to avoid consideration of all narrowing amendments presented to avoid prior art rejections.

Conclusion

In view of the foregoing, reconsideration and withdrawal of the holding of nonresponsiveness and early notice of allowance is respectfully solicited.

Respectfully submitted:



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